

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1181.

141

JAMES F. WATERS, AND LEVI C. WEIR, HENRY SAN-
FORD, AND CLARENCE A. SEWARD, PARTNERS
TRADING AS ADAMS EXPRESS COMPANY, APPEL-
LANTS,

vs.

GEORGE H. ANTHONY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 18, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

JAMES F. WATERS ET AL., Appellants,
vs.
GEORGE H. ANTHONY. } No. 1181.

a Supreme Court of the District of Columbia.

GEORGE H. ANTHONY, Plaintiff,
vs.
JAMES F. WATERS, OLIVER B. GEORGE, and
Levi C. Weir, Henry Sanford, and Clarence
A. Seward, Copartners Trading as Adams
Express Company, Defendants. } No. 43985. At Law.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Amended Declaration.*

Filed March 29, 1901.

In the Supreme Court of the District of Columbia.

GEORGE H. ANTHONY, Plaintiff,
vs.
JAMES F. WATERS, OLIVER B. GEORGE, and
Levi C. Weir, Henry Sanford, and Clarence
A. Seward, Copartners Trading as Adams
Express Company, Defendants. } Law. No. 43985.

Comes now the plaintiff, by leave of the court in that behalf first had and obtained, and files this his amended declaration against James F. Waters, Oliver B. George, and Levi C. Weir, Henry Sanford, and Clarence A. Seward, copartners trading as Adams Express Company, in the original declaration filed herein inadvertently described as a body corporate, and for cause of action states as follows:

The defendants Levi C. Weir, Henry Sanford, and Clarence A. Seward are, and at the time of the committing of the grievances hereinafter mentioned were, copartners doing business under the firm name and style of Adams Express Company in, to wit, the

District of Columbia, and the defendants Waters and George were, at the time of the committing of the said grievances, servants and in the employ of the said Adams Express Company, in the said District of Columbia. On, to wit, the 16th day of January, A. D. 1900, the said defendants, Waters and George, personally, and the said defendant, Adams Express Company, by and through the said defendants, Waters and George, or one of them, to wit, at the said District of Columbia, with force and arms unlawfully, wrongfully, falsely, maliciously, and without any reasonable or probable cause accused the plaintiff of a certain crime, to wit, larceny, and assaulted the plaintiff and unlawfully, wrongfully, falsely, maliciously, and without any reasonable or probable cause arrested the plaintiff and took him along and over divers public streets of the city of Washington, in said District of Columbia, and imprisoned him in a certain police station or prison-house in the said District of Columbia for a long period of time, to wit, a period of two days, and other grievous wrongs and injuries to the plaintiff then and there did, to the great humiliation, degradation, disgrace, and bodily and mental pain and anguish of the plaintiff; and the plaintiff was then and thereby and by reason of the premises deprived of and lost his employment, which he had theretofore had with the said Adams Express Company, and was and has been rendered unable to procure other employment in lieu thereof, to the damage of the plaintiff twenty-five thousand (25,000) dollars. Wherefore the plaintiff claims of the said defendants twenty-five thousand (25,000) dollars damages, besides costs.

DAVIS & TUCKER,
GEO. W. DREW,
Attorneys for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of service hereof; otherwise judgment.

DAVIS & TUCKER,
GEO. W. DREW,
Attorneys for Plaintiff.

3

Defendants' Plea.

Filed April 10, 1901.

In the Supreme Court of the District of Columbia.

GEORGE H. ANTHONY	}	Law. No. 43985.
vs.		
JAMES F. WATERS ET AL.		

The defendants for plea to the plaintiff's amended declaration say they are not guilty as alleged.

WM. S. THOMAS,
S. T. THOMAS,
Attorneys for Defendants.

Joinder on Pleas, &c.

Filed April 11, 1901.

In the Supreme Court of the District of Columbia.

GEORGE H. ANTHONY }
vs. } Law. No. 43985.
JAMES F. WATERS ET AL. }

The plaintiff joins issue on the pleas of the defendants to the amended declaration.

HENRY E. DAVIS,
GEORGE W. DREW,
Attorneys for Plaintiff.

4 *Memoranda.*

December 19, 1901.—*Non-pros.* as to defendant Oliver B. George.
December 20, 1901.—Verdict for plaintiff against all defendants, except defendant George.

5 Supreme Court of the District of Columbia.

FRIDAY, January 3, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

GEORGE H. ANTHONY, Plaintiff,
vs.
JAMES F. WATERS, OLIVER B. GEORGE, and
Levi C. Weir, Henry Sanford, and Clarence
A. Seward, Copartners Trading as Adams
Express Company, Defendants. } At Law. No. 43985.

'This cause coming on to be heard upon the defendants' motion for a new trial, and the same having been heard, it is considered that said motion be, and the same is hereby, overruled and judgment on verdict ordered; therefore it is considered that the plaintiff recover against James F. Waters and Levi C. Weir, Henry Sanford, and Clarence A. Seward five thousand three hundred and forty dollars (\$5,340) for his damages as aforesaid assessed, together with his costs of suit, to be taxed by the clerk, and have execution thereof.

The defendants James F. Waters, Levi C. Weir, Henry Sanford, and Clarence A. Seward note an appeal individually to the Court of Appeals, and the bond for costs on James F. Waters' appeal is fixed in the sum of \$100.00, and the penalty of the bond on the appeal of Levi C. Weir, Henry Sanford, and Clarence A. Seward to operate as a supersedeas is fixed at \$10,000.00.

6 *Death of Defendant Seward Suggested.*

Filed January 14, 1902.

In the Supreme Court of the District of Columbia.

GEORGE H. ANTHONY }
vs. } At Law. No. 43985.
JAMES F. WATERS ET AL. }

The defendants Levi C. Weir and Henry Sanford, surviving partners trading as the Adams Express Company, by Sidney T. Thomas and William S. Thomas, their attorneys, respectfully suggest the death of Clarence A. Seward, the person sued as one of the copartners of the Adams Express Company. Wherefore these defendants, by said attorneys, move that the said cause proceed by and against Levi C. Weir and Henry Sanford, surviving copartners trading as the Adams Express Company.

S. T. THOMAS,
WM. S. THOMAS,
Attorneys for Defendants.

STATE OF MARYLAND, }
Baltimore City, } *To wit:*

I hereby certify that on this 13th day of January, 1902, before the subscriber, a notary public of the State of Maryland duly commissioned and qualified, personally came William S. Thomas and made oath in due form of law that the matters and things set forth in the foregoing suggestion are true, and that he is the attorney for Levi C. Weir and Henry Sanford, surviving copartners trading as the Adams Express Company, and authorized to make this affidavit on their behalf.

[SEAL]

J. ALEX. HILLIARY, JR.,
Notary Public.

Copy ack.

GEORGE W. DREW,
Attorney for Plaintiff.

Memorandum.

January 15, 1902.—Bond for costs on appeal filed by defendant Waters and supersedeas bond by defendants Weir and Sanford filed.

JANUARY 27, 1902.

GEORGE H. ANTHONY, Plaintiff, }
vs. } At Law. No. 43985.
THOMAS F. WATERS ET AL., Def'ts. }

Now come here again the defendants, by their attorneys, and tender to the court here their bill of exceptions, taken during the

trial hereof, and pray that the same may be duly signed, sealed, and made part of the record, now for then, which is done accordingly.

8

Bill of Exceptions.

Filed January 27, 1902.

In the Supreme Court of the District of Columbia.

GEORGE H. ANTHONY

vs.

THOMAS F. WATERS, OLIVER B. GEORGE, &
The Adams Express Company.

} At Law. No. 43985.

At the trial of this cause, which took place on the 19th, 20th, and 21st days of December, 1901, before the Honorable Edward F. Bingham, chief justice, and a jury, the plaintiff, to maintain and prove the issues on his part joined, called as a witness in his behalf the defendant OLIVER B. GEORGE, who, being first duly sworn, gave evidence tending to prove that he was the agent of the Adams Express Company in the District of Columbia, and was such agent on January 16, 1900; that his duties were to look after the express business in general of the Adams Express Company; that he knew James F. Waters, one of the defendants in this cause, and that at present the said Waters was employed as a clerk in the cashier's office of the said company; that on January 16, 1900, the said Waters was employed by the Adams Express Company in the capacity of a clerk, at the 6th Street station of the Baltimore and Potomac railway, in this city; that the said Waters was at no time, to witness' knowledge, the agent of the company; that the said Waters was in charge of the office of the Adams Express Company at the said 6th Street railway station.

9

On cross-examination the said George gave evidence tending to show that his duty as agent of the Adams Express Company was to look after the various officers in this District, and conduct of the business in general from day to day, the movement of the cars and the delivery of express matter, and the collection of freight, the making up of accounts, handling of money, valuables, and so forth; that witness did not have any authority from the defendants trading as the Adams Express Company to cause any arrests being made; that the duties of the defendant Waters were to waybill such matter as might be brought to his office, and forward it on the respective trains, sign for packages delivered to him by the express messengers running in and out of the station to take charge of such matter, and valuables, and make up daily statements of the business done at the office; that the defendant Waters had no specific authority from the witness to cause the arrest of any one on behalf of the company; that the defendant Waters was a subordinate of the witness since his connection with the defendants trading as

the Adams Express Company; that witness had power to dismiss him; that the defendant Waters made his reports to the witness, and not to any other officer of the company; that the witness never gave the said Waters any authority to have any one arrested; that the defendant Waters took his instructions from the witness ever since he, the witness, has been agent of the company in this city.

That the duties of the defendant Waters at the Baltimore & Potomac Railroad station, not outlined in the general instructions pertaining to employees of the company, were defined by the witness; that the general rules governing employees of the Adams Express Company are promulgated by the executive officers of the company, by the board of managers, who meet in New York city at the executive offices, No. 69 Broadway.

On redirect examination said witness gave evidence tending to prove that the Adams Express Company was not a corporation, but was a partnership, as he understood it, the defendants Levi C. Weir, Henry Sanford, and Clarence A. Seward being copartners trading as the Adams Express Company; that the only kind of instructions coming from the board of managers of the Adams Express Company to the witness were general instructions to agents and employees of the company; that the business of the Adams Express Company is to transport packages from one point to another in the United States for hire; that instructions to agents and employees of minor importance emanated from the superintendent's office, but the superintendent or any other officer of the company has no authority to change the general rules laid down by the executive board; that instructions relating to train service or the changing of certain forms of reports and matters of detail emanate from the superintendents; that the report of the witness with reference to the discharge of his duty in general is made to the manager of the company in Philadelphia, and to the superintendent in Baltimore; that witness entered the employ of the Adams Express Company in 1879, and first became an agent of the company in 1884, and was appointed agent of the company in Washington in July, 1899, succeeding George. W. Moss; that if the defendant Waters, at the Baltimore & Potomac station, should discover the loss of a package in the care of the company, he would report to the

witness, and the witness in turn would report to the superintendent; that there was nothing further the defendant

Waters could do after the loss except to report the loss to the witness, and he (Waters) was not instructed to investigate it any further; that the defendant Waters was responsible for the disposition of the package, so that any investigation he, Waters, might make would be to his own interest, but he was not instructed to make any; that the witness does not know who appointed the defendant Waters; that Waters was an employee of the company when witness came to Washington in 1899; that if the defendant Waters' place was now vacant witness would appoint his successor, but the company would have a right to approve or disapprove the appointment, and if they disapproved the appointment the ap-

pointee would go off the roll; that the defendant Waters had not the same position with the company he had in 1900; that he is now in the cashier's office, whereas in January, 1900, he was in the station office at the Baltimore & Potomac Railway station, and he was responsible for all the matter receipted for by him; that the witness does not know that there is any difference in the rank of the two offices; that the salary is the same; that the defendant Waters is stationed at the warehouse now and not at the 6th Street station; that his business now is to help check and settle up the accounts; that before that witness would call him a clerk in charge of the company's office at the station, and his general duties were to waybill or manifest all matter brought in there or forwarded on the various trains, particularly such matter as might be brought to his office by local messengers running on trains; that the witness would call him a clerk.

12 In recross-examination witness testified that no instructions would be issued to Mr. Waters defining his position other than through the witness.

The plaintiff, to further maintain the issues on his part joined, called as a witness in his behalf the defendant JAMES F. WATERS, who, having been first duly sworn, gave evidence tending to prove that he was in the employ of the Adams Express Company in the capacity of settling clerk in cashier's office; that his employment by the said company from October, 1899, to January, 1900, was in the receiving offices of the company at the Baltimore & Potomac Railway station, in this city; that, as being in charge of that office, his duties were to receive and receipt for all matter brought there by the public, to take telephone messages, and receipt for all valuable packages that were brought by messengers and others to the door from trains; that he was responsible for packages delivered to his office after he had receipted for them; that he had a man in the office by the name of Edward Woods, who was his assistant; that from October, 1899, up to and including January, 1900, the drivers were in charge of the witness, and that during that period the witness was classed as delivery clerk, but had no authority to employ or dismiss a driver; that he was merely placed in charge of the drivers to see that they made their deliveries properly, and if there was any trouble with the drivers the witness would report to the agent; that in case of the loss of a package the witness would report it to the agent at once; that the witness had no duty in regard to receiving packages; that he had nothing to do in regard to lost packages further than reporting them to the agent; he would be compelled to report it to let the company know that they were lost; that during the agency of Mr. George W. Moss, who preceded Mr. George, the witness was classed as agent, but since
13 Mr. Moss resigned that office was abolished, and the witness was classed as a clerk, but that witness' duties were the same under both Mr. Moss and Mr. George; that the witness knows Mr. Royal B. Fallis; that Mr. Fallis was in the employ of the Adams Express

Company, and was in October, 1899, and up to and including January, 1900, and that Mr. Fallis was depot agent at the 6th Street station, and that witness never was; that Mr. Fallis had control of the drivers of the company.

And thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness on his behalf WILLIAM T. TYSER, who, being first duly sworn, testified as follows: That he is a member of the Metropolitan police force of the District of Columbia, and has been such for nearly six years; that in January, 1900, he was detailed for detective duty at the Baltimore & Potomac Railway station in this city; that the witness knows the plaintiff, George H. Anthony, and arrested him on the 16th of January, 1900; that about the 15th of January, 1900, witness had a talk with Mr. Parham, also a member of the Metropolitan police force, as to a package of pearls that was missing from the Adams Express Company's office at the Baltimore & Potomac Railway station; that witness and Parham talked the matter over and witness concluded to speak to the defendant Waters about it; that witness talked the matter over with Mr. Waters, and from this conversation suspicion fell so strongly on Anthony that witness brought him in for Mr. Parham; that witness had no talk with the defendant George in regard to the matter, that he found Mr. Waters at the Baltimore & Potomac Railway sta-

14 tion in this city; that the witness first went to Anthony's house and left a message for him to come to the station, and that he then waited on the outside and saw plaintiff on his way to the railway station; that when the plaintiff Anthony was about fifty yards from the office of the Adams Express Company, at the Baltimore & Potomac Railway station, the witness went up to him and walked with him down to the office of the defendant Waters and asked Mr. Waters if that was Anthony and Mr. Waters said yes; that the witness had seen Anthony before, round the station, but did not know his name; that the witness found where Mr. Anthony lived by making inquiries around the station; that he asked Mr. Waters where Anthony lived, but Waters did not know; that when the witness saw Mr. Waters witness opened the conversation by saying he understood there had been a loss in his (Waters') office, and that witness asked Mr. Waters in regard to the loss; that Waters told witness what was reported to have been stolen or lost, and that witness asked Waters if he had any suspicions, and that Waters said, "I will relate them to you and see what you think;" that then Waters went on and told witness that on the day the pearls were missing the plaintiff Anthony was there in the office, and that the next day the witness mentioned the loss to Anthony, and that Anthony made the remark, "Well, you remember I was not here. I was at home oiling two floors that day," and that witness said, "Is that so?" and that Waters replied to Parham, "No; he was here with me;" and that witness then said, "How could he (the plaintiff) make that assertion to you, then?" and that Waters replied, "There you are;" that witness then said to Waters, "That looks

suspicious;" that witness could not state exactly the conversation he had with Waters, but it was such as would lead
15 him, the witness, to believe that Waters was responsible for the pearls stolen, and that witness would take Anthony in for the pearls, by the advice of Waters; that witness' conversation with Waters occurred around the platform at the Potomac Railway station in this city, at divers times; that when witness went to Anthony's house to get him he had talked to Waters about the case twice; that witness did not go right from Waters to Anthony's house; that it was about 24 hours after the last conversation with Waters that witness arrested Anthony; that when witness went to Anthony's house to see him he left word for Anthony to come to the Baltimore & Potomac station, as Mr. Fallis wanted him to come to the station; that witness then came out on Sixth street, and waited to see Anthony come out of his home, and start towards the railway station; that witness followed him, keeping him in sight all the way, and when within fifty yards of the Adams Express Company's office, at the Baltimore and Potomac Railway station, witness accosted Anthony, and accompanied him to the office of Waters, and then asked Mr. Waters if that was Mr. Anthony, and Mr. Waters replied that it was; that witness then stated to Waters, "I would like to have you accompany me to police headquarters and lock him up;" that witness then arrested Anthony, and went with him and Waters to police headquarters, and there called a patrol wagon and had Anthony taken to the police station and locked up; that witness' connection with the case ceased at that point; that Mr. Fallis never told the witness that he wanted to see Anthony; that the — trial, and that he had no conversation with any one connected with the Adams Express Company, except Mr. George
16 and Mr. Waters; that when witness went to see Mr. George it was not in response to any message from Mr. George to come and see him; that the defendant Waters gave the witness information in regard to Mr. Anthony, and Mr. Waters told witness that Mr. Anthony had told him that he was at home oiling floors for his wife the day the pearls were missing. The witness reported to Mr. Parham, and he and Mr. Parham consulted about the matter. That when witness arrested Anthony he asked Mr. Waters to accompany him to police headquarters as the complaining witness; that witness judged from his conversation with Waters that he was the complaining witness, and requested witness to make the arrest, as the suspicion was so strong against Anthony that he would make the arrest under that suspicion. Witness had a conversation with Waters and then one with Parham, and that it was after witness had had his conversations with Parham that he decided to arrest Anthony; that witness, after he had arrested Anthony, told Waters he had to come along to police headquarters and enter the charge against him, and Waters went with him; that witness first got the information in regard to the loss of the package of pearls from Mr. Waters; that he was not directed by any one connected with the

police department to make the arrest. Mr. Parham did not direct witness to make it. We came to the conclusion after we learned Anthony's statement to Waters that it was sufficient; that Mr. Waters told him about it on the platform in front of his office at the Baltimore & Potomac Railway station; that after Waters told witness about the missing pearls the witness learned that Mr. Parham had been assigned to the case; that at the time Mr. Waters first told witness that he suspected Anthony he did not mention any one else's name; that Waters told witness that Anthony
17 was around there on the day of the theft, but that Anthony told him (Waters) that he was at home oiling floors that day; that subsequently he was told that Anthony's statement that he was at home oiling floors was incorrect, and in the witness's mind that caused a suspicion which justified the arrest of Anthony; that witness cannot say whether he received any instructions from any one else than Waters with respect to arresting Anthony; that prior to the arrest of Anthony the witness had a conversation with Parham in regard to arresting Anthony; you might call it instructions or orders; witness and Parham compared their suspicions together as to Anthony's conduct, etc., and they came to the conclusion that Waters was safe in his suspicions, and that it was not until after this conversation with Parham that witness decided to arrest Anthony; that at witness's first conversation with Waters the latter did not say that he suspected any one else beside Anthony, but that a few days later, or that afternoon, he did tell witness that he suspected some one else; that witness' conversation with Waters was as to what suspicious persons were around there, to judge from which one loitering there the day of the theft was the guilty person; that Waters told him his suspicions about Anthony.

By Mr. W. S. THOMAS:

Q. And subsequently he (Waters) found out that was incorrect, and in your mind that was a suspicion which justified the arrest of the man?

Mr. DAVIS: That is not the testimony. He says on his direct examination and also on his cross-examination that he went down there where his place of duty was, and in conversation
18 Waters brought the matter up to his attention, and it was not until afterwards that he learned that Parham had been assigned to the case, and he subsequently entered into conversation with Waters and asked him if he had any suspicions—asked him about the matter—and then Waters told him that Anthony had said that he was at home the day of the robbery, oiling his floors, whereupon Waters says, "I know that is not so, because he was in my office on that day," and he (the witness) says as a result of the conversation with Waters and at his request he proceeded to arrest Mr. Anthony, and when he got Anthony down to the station and had Waters identify him he required Waters to go along with him to police headquarters as the complaining witness, upon whose com-

plaint he had made the arrest, and that Waters did go and had his name entered on the blotter as the complaining witness. That is correct?

The WITNESS: Yes, sir.

Continuing, the witness further testified that he had not received instructions from any other person than Mr. Waters with respect to the arrest of the plaintiff; that prior to the arrest of Anthony he had a conversation with Mr. Parham; that witness received what you might call instructions in a way. "We compared our suspicions together as to Anthony's conduct, and so forth, and we came to the conclusion that Waters was safe in his suspicions;" and it was not until after his conversation with Parham, in which witness and Parham talked over the suspicions, the conversations with and communications to witness by Waters, that witness decided to arrest Anthony.

On redirect examination the witness Tyser further testified as follows:

19 That Waters gave him the name of a young man (Mr. Adams) whom he also suspected in connection with the larceny of the package of pearls, but Adams was arrested, but witness did not know what disposition was made of his case; that witness made a memorandum of the charge against Anthony, and handed it to the desk sergeant to be transferred to the blotter at police headquarters; that after the memorandum was transferred to the blotter the witness threw it into the waste basket; that witness had no talk with Parham in regard to the theft before the report of the loss was made by the defendant Waters; that the witness' conversations with Parham and Waters were not on the same day; that the first conversation was with Waters, and then witness, finding that Parham had been assigned to the case, went to see him and talked the matter over with him.

On recross-examination said witness testified as follows:

That he assisted Parham in ferreting out the loss, but that he had no conversation with Parham until after the report of the loss was made, and he had talked with Waters; that Parham left the city the evening previous to the arrest of Anthony; that Parham was assigned to the case, and that witness talked the matter over with Mr. Parham, and then in assistance to Parham witness went down and got Waters' statement, and that as a result arrested the plaintiff. This was the substance of Tyser's testimony.

And thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness ARCHIBALD McCALLUM, who, being first duly sworn, gave evidence tending to prove that he was a railway postal clerk, and was employed in January, 1900, as assistant transfer clerk at the Baltimore and Potomac Railway station

20 in this city when Mr. Tyser and Mr. Anthony came out of the side gate and walked up toward the express company's office; that Mr. Waters at that time was standing in the door of the express office; that Mr. Tyser said, "Mr. Waters, do you know this

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The WITNESS: Yes, sir.

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20 in this city when Mr. Tyser and Mr. Anthony came out of the side gate and walked up toward the express company's office; that Mr. Waters at that time was standing in the door of the express office; that Mr. Tyser said, "Mr. Waters, do you know this

wards cut down to \$40 a month; that in December, 1899, when he left the company's employ, he was getting \$40 a month; that he was discharged on the 7th or 8th of December, 1899, and was arrested in January, 1900, on a charge of having taken a

22 package of pearls which was missing from the company's office in the Baltimore & Potomac Railway station in this city; that witness did not take the pearls and knew nothing about them; that Detective Tyser came to witness' house while he was in bed, about 7 or half past 7 o'clock in the morning, and left word for witness to go to the Baltimore & Potomac Railway station in this city and see Mr. Fallis, one of the agents of the Adams Express Company, who wanted to talk with him about going to work; that witness got up as soon as he could and went down to the station, and met Mr. Tyser as he came into the station; that Mr. Tyser asked witness where he was going, and witness said he was going to see Mr. Fallis, that he had sent for him; that witness then walked along with Tyser and talked with him; that witness knew Tyser as a detective around the railway station, although he did not know his name. Witness knew him as working down there and walked along with him to the gate; that Mr. Waters was standing in the door, and witness had a conversation with him and asked him if he had seen Fallis, and Waters said, "Yes, he has just gone up in the passenger department of the depot, and will be back in a few minutes;" that then Tyser walked over to witness and said, "Fallis does not want to see you; I want to see you;" that witness then asked Tyser his name, and Tyser told witness his name; that witness asked Tyser what he wanted, and Tyser said, "We want you for taking those pearls;" that witness said to Tyser he knew nothing about the pearls, and that Tyser said, "We have got the dead wood on you; we know all about that;" that then Tyser took hold of witness'

arm and carried him by the arm to police headquarters;
23 that witness walked with Tyser along C street to police headquarters; that when witness and Tyser got to police headquarters the patrol wagon was called; that witness heard them telephone for the wagon; that when the wagon came witness, at the direction of Tyser, got into it and was driven to the New Jersey Avenue police station; that witness was at police headquarters only about ten minutes; that there was a policeman in the patrol wagon and the driver, but witness does not know who they were; that when witness got to the police station on New Jersey avenue he was searched and locked up; that it was between nine and ten o'clock in the morning when witness was taken to the police station; that he was locked up in a cell in the station and kept there two days and two nights, and was finally discharged without being taken before any court, or without any information or indictment ever being presented against him, he being told at the station-house there was nothing against him; that while witness was in the police station he tried to get bail, and asked the station-keeper if he would telephone his people, who had a telephone in their house, and that the station-keeper replied that the detectives had left word that witness

fellow?" pointing to Anthony, and that Mr. Waters said, "Hello, George." Then they held a low-toned conversation there that I did not catch, and presently Mr. Tyser turned around and took Anthony by the coat sleeve and indicated the direction he wanted him to go, and he went north on Sixth street. I went over to Mr. Waters and asked him what the trouble was with George, meaning Mr. Anthony, and he said he didn't know.

And the plaintiff, to further maintain the issues on his part joined, called as a witness in his behalf CHARLES H. ADAMS, who, being first duly sworn, gave testimony tending to prove that prior to January 16, 1900, he was occupied as depot wagon driver of the Adams Express Company in this city, but that he is not in the employ of the Adams Express Company now; that the plaintiff's employment at that time was as driver of a wagon; that he remembers the occasion of Mr. Anthony's arrest on the charge of stealing some pearls, and the witness was arrested for the same thing on the same day, on January 16, 1900; that Mr. Anthony was arrested first; that the witness was arrested about 4 o'clock in the afternoon and taken to the 1st precinct police station on 12th street northwest, in this city; that he was not at any time taken to police headquarters; that he was kept at the 1st precinct police station for two days and two nights on the charge of stealing the pearls in question, and was discharged; that he did not take the pearls.

21 And the plaintiff, to further maintain the issues on his part joined, was sworn as a witness in his own behalf, and gave testimony tending to prove that he was 32 years of age; that just now he is engaged with his father-in-law in the wood and coal business; before that he was employed by the Adams Express Company for 12 or thirteen years; that he entered the employ of the Adams Express Company in 1888, and left it on December 8, 1899; that when he was first employed by the Adams Express Company he was a helper on the wagons; that he was then promoted to be a driver, and drove one of the company's wagons for about ten years; that his duty as driver was to collect and deliver packages about the city; that when he would collect packages he would take them to the warehouse of the company and place them by the scales where they were weighed, and he marked them off; that after the packages were weighed some were taken to the office of the company at the depot on 6th street, some to the office of the company on Pennsylvania avenue, and some to the company's office at Sixth street; that when he received the packages from the Pennsylvania Avenue station he received them from Mr. Waters, who had charge at that point; that when he got the packages into his possession he would deliver them to the consignees; that Waters directed the drivers and other employees of the company in and around the Baltimore & Potomac Railway station in this city; that there was nobody at the railway station over Mr. Waters; that at one time the witness received a salary of \$60 a month, but he was after-

wards cut down to \$40 a month; that in December, 1899, when he left the company's employ, he was getting \$40 a month; that he was discharged on the 7th or 8th of December, 1899, and was arrested in January, 1900, on a charge of having taken a

22 package of pearls which was missing from the company's office in the Baltimore & Potomac Railway station in this city; that witness did not take the pearls and knew nothing about them; that Detective Tyser came to witness' house while he was in bed, about 7 or half past 7 o'clock in the morning, and left word for witness to go to the Baltimore & Potomac Railway station in this city and see Mr. Fallis, one of the agents of the Adams Express Company, who wanted to talk with him about going to work; that witness got up as soon as he could and went down to the station, and met Mr. Tyser as he came into the station; that Mr. Tyser asked witness where he was going, and witness said he was going to see Mr. Fallis, that he had sent for him; that witness then walked along with Tyser and talked with him; that witness knew Tyser as a detective around the railway station, although he did not know his name. Witness knew him as working down there and walked along with him to the gate; that Mr. Waters was standing in the door, and witness had a conversation with him and asked him if he had seen Fallis, and Waters said, "Yes, he has just gone up in the passenger department of the depot, and will be back in a few minutes;" that then Tyser walked over to witness and said, "Fallis does not want to see you; I want to see you;" that witness then asked Tyser his name, and Tyser told witness his name; that witness asked Tyser what he wanted, and Tyser said, "We want you for taking those pearls;" that witness said to Tyser he knew nothing about the pearls, and that Tyser said, "We have got the dead wood on you; we know all about that;" that then Tyser took hold of witness' arm and carried him by the arm to police headquarters;

23 that witness walked with Tyser along C street to police headquarters; that when witness and Tyser got to police headquarters the patrol wagon was called; that witness heard them telephone for the wagon; that when the wagon came witness, at the direction of Tyser, got into it and was driven to the New Jersey Avenue police station; that witness was at police headquarters only about ten minutes; that there was a policeman in the patrol wagon and the driver, but witness does not know who they were; that when witness got to the police station on New Jersey avenue he was searched and locked up; that it was between nine and ten o'clock in the morning when witness was taken to the police station; that he was locked up in a cell in the station and kept there two days and two nights, and was finally discharged without being taken before any court, or without any information or indictment ever being presented against him, he being told at the station-house there was nothing against him; that while witness was in the police station he tried to get bail, and asked the station-keeper if he would telephone his people, who had a telephone in their house, and that the station-keeper replied that the detectives had left word that witness

could not see anybody or send word to anybody, and witness as a matter of fact did not see anybody during the two nights and days he was confined in the station-house; that while witness was confined in the police station he slept on an iron bench with no cover, and when he came out he was almost dead with a cold; that it was a dirty place, and that they gave him his meals by shoving them under the door; that one day he called for water for two hours before he could get any attention; that his food consisted of some black coffee, eggs, and some hard stale bread; that he had no bed; that wit-

24 ness was released about half past ten in the morning of January 18, 1900; that witness was in a position to have given bail had he been permitted to do so; that he had lived in Washington about seventeen years, and was well acquainted in the city, knowing every merchant in Washington; that since said arrest witness has had the matter brought to his attention more than once; that once, when he went to the United States Express Company for employment, they turned him down on account of it; that he also endeavored to get employment with the Washington Brewery Company, and they turned him down on account of this arrest; that witness has not done anything since said arrest except helping his father-in-law in the latter's wood and coal business; that since said arrest the witness has worked for the American Security & Trust Company for six or seven weeks, off and on, but with that exception he has had no employment since he was discharged by the Adams Express Company.

On cross-examination the plaintiff Anthony gave evidence tending to prove that he had been discharged from the Adams Express Company's service before the 7th or 8th of December, and re-employed; that the cause of his dismissal on the prior occasion was that he was drinking at the time; that he was not discharged, however, on December 8th, 1899, for drinking; that witness does not know why he was discharged on that day; that witness does not know on what day the package of pearls was missing from the Adams Express Company's custody; that witness went to the defendant Waters some time before Christmas, and made a remark about the missing pearls; that witness asked Mr. Fallis the cause of his dismissal, but he did not ask Mr. George, the agent of the company.

25 Thereupon the plaintiff, to further maintain and prove the issues on his part joined, called as a witness in his behalf ROBERT L. BOARDMAN, who, being first duly sworn, gave evidence tending to prove that he was assistant superintendent of the Metropolitan police of the District of Columbia; that witness had with him the official blotter of complaints made to the detective office of robberies, and so forth; that said blotter contains an entry in regard to the loss of some pearls by the Adams Express Company; that said blotter is part of the official records of the Metropolitan police department. On cross-examination said witness gave evidence tending to prove that he did not make the entry in the blotter in

regard to the loss of the pearls; that the entry is in the handwriting of Mr. Gorman, a clerk in the detective office; that witness does not know whether the entry is correct or not, nor does he know whether any of the defendants were present when it was made.

And thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness in his behalf MICHAEL B. GORMAN, who, being first duly sworn, gave evidence tending to prove that he was a member of the Metropolitan police force of the District; that in January, 1900, he was detailed as a clerk in the detective bureau of the police department. The witness, being shown the blotter produced by Boardman, the preceding witness, gave evidence tending to prove that the entry on said blotter in regard to the loss of said pearls by the Adams Express Company was in his handwriting. On cross-examination said witness gave evidence tending to prove that he did not know who were present when said entry was made, and did not know any of the circumstances attending the entry and had no personal knowledge of the matter.

26 Thereupon counsel for the plaintiff offered said blotter in evidence; to which the defendants, by their counsel, objected on the grounds that the blotter was inadmissible against the defendants, they not being shown to have been connected with the entry therein in regard to the loss of the pearls, and thereupon counsel for the plaintiff withdrew the offer of the blotter.

Thereupon the defendants, to maintain and prove the issues on their part joined, called as a witness in their behalf ALPHA W. PARHAM, who, being first duly sworn, gave evidence, the substance of which was as follows: That he was a detective sergeant on the Metropolitan police force of the District of Columbia; that he had only been a detective sergeant for a few months—since the office was created—but had been a member of the police force nearly twelve years; that in January, 1900, he was employed as a detective officer on the Metropolitan police force; that witness knows the plaintiff in this case, Mr. Anthony, and also the defendant Mr. Waters; that a complaint was made to witness by Waters with regard to some pearls which were missing from the office of the Adams Express Company at the Baltimore & Potomac Railway station in this city; that Captain Boardman, of the Metropolitan police, called the witness in and assigned him to the case, and told witness to do what he could for Waters; that witness was sent over to Baltimore the next day, but in the meantime, the day of the complaint, witness had a conversation with Detective Tyser and requested him to arrest Anthony, and also a Mr.

27 Adams, as the witness took an early train for Baltimore, and while there was assisted by one of the Baltimore officers in investigating the case—that is, in regard to the recovery of the pearls; that when witness returned to Washington he was informed that Tyser had arrested Anthony and had him locked up at No. 6 precinct station-house; that about half past three or a quarter to

four o'clock that day witness, in company with Detective Hartigan, went to the Baltimore and Potomac Railway station in this city and arrested Adams; that Adams was sent to No. 1 station, on 12th street northwest; that witness had a conversation with Mr. Anthony in the presence of Hartigan, and Mr. Anthony emphatically denied knowing anything about the missing pearls; that witness talked to the defendant Waters about the case.

And thereupon the witness Parham further gave evidence tending to prove that when the defendant Waters called at police headquarters in regard to the lost pearls that Captain Boardman, witness, and Mr. Tyser were present, but witness did not hear the conversation between Captain Boardman and Mr. Waters; that Mr. Waters went to police headquarters the day before the arrest; that witness could not say whether Waters was at police headquarters on the day that Anthony was arrested, as witness was not present, being, as before stated, in Baltimore; that at the time Waters came to police headquarters he did not lodge a complaint against Anthony charging *with* with the larceny of the pearls.

On cross-examination the witness Parham gave testimony tending to prove that Waters did not come into police headquarters by himself when this loss was reported, but that Tyser brought him in; that both Tyser and Waters came in and went to see Captain Boardman; that witness came into the room afterwards, but before

28 Waters left, and there was then a conversation about the loss of the pearls; that Tyser arrested Anthony at the suggestion of witness, and that witness' direction to arrest Anthony grew out of what he heard in the conversation at police headquarters.

And thereupon counsel for the defendants asked the witness Parham the following question:

"Q. Was the arrest made by the police department of the District of Columbia acting for itself or was the arrest made at the instance and request of Waters?"

To which question, before the same was answered, counsel for the plaintiff objected on the ground that it called for the opinion of the witness, and the court sustained said objection and refused to allow the witness to answer the question; to which action of the court counsel for the defendants duly excepted, and said exception was noted at the time upon the minutes of the court.

And thereupon the defendant JAMES F. WATERS was called as a witness in his own behalf and gave testimony tending to prove that, in connection with the arrest of the plaintiff Anthony, the witness went to see Detective Tyser, and the latter took witness before Inspector Boardman, and while the matter was being talked over with Boardman Detective Parham came in; that the next day, or perhaps two days after, Mr. Tyser came to witness at the office of the Adams Express Company at the Baltimore & Potomac Railway Company's station in this city with the plaintiff Anthony; that witness spoke to Anthony and the latter said, "Did you see Mr. Fallis

around here?" That witness told Anthony no; that he thought Fallis had gone up in the depot; that then Detective Tyser said to Anthony, "Mr. Fallis does not want to see you; I want to see you; come on and go up the street with me." That witness did not follow

29 Tyser to police headquarters, and did not go to police headquarters until 7 o'clock that night; that witness did not request Mr. Tyser or Mr. Parham to arrest Anthony; that witness saw Detective Tyser on January 14, 1900, and told him what his suspicions were in regard to the missing pearls; that witness mentioned to Tyser Mr. Anthony's name—told him that Anthony was an old employee of the company just then unemployed, and that he had been hanging around the depot a great deal and was always in there talking with the witness; that Anthony was in witness' office the morning witness signed for all the packages, some 13 or 14, including the missing pearls; that Anthony left the office shortly after witness signed for the packages and returned later on—in the afternoon; that witness then told him about the missing package of pearls; that Anthony replied, "Well, Jim, I was not there; I was home oiling some floor with my wife;" that shortly after Christmas Anthony called at witness' office; that he was then intoxicated, and had quite a roll of money; that Anthony offered witness some of the money, and paid a bill he owed Mr. Woods, assistant clerk in the office, and then offered Mr. Woods some more money; that knowing that fact that Anthony was not at work, and that he had quite a roll of money with him, and knowing that he was in the witness' office the morning the package of pearls was lost—from knowing these facts the suspicion resulted in the arrest; that witness told these circumstances to Detectives Tyser, Boardman, and Parham was called in afterwards; that after the witness had communicated the above facts Mr. Anthony was arrested; that witness was never requested to make a complaint against Anthony, and

30 never appeared at police headquarters to lodge a complaint against him; that witness simply narrated what he regarded as suspicious circumstances to Detective Tyser and did not direct the arrest of Anthony; that the package of pearls in question was missed on the 13th of October, 1899, and the arrest took place on the 16th of January, 1900.

That witness was in charge of the office at the time the pearls were lost, and signed for the package; that witness does not know whether the company was ever paid for the pearls or not.

And thereupon the witness Waters was asked by counsel for the defendants the following questions:

"Q. Mr. Waters, were you requested by any of the defendants in this case to go before the police department and make any complaint about any one in respect to these pearls?"

To which question, before the same was answered, counsel for the plaintiff objected *under* ground that the same was immaterial, and the court sustained said objection and refused to allow the witness to answer the question; to which action of the court counsel for the defendants duly excepted, and said exception was noted at the time — minutes of the court.

On cross-examination the witness Waters gave evidence tending to prove that the arrest of Anthony was made on the second day after Tyser had the conversation referred to; that witness' conversation with Tyser was just before the arrest of Anthony—one or two days before; that the package of pearls was lost on October 13th, 1899, and the arrest of Anthony was not made until January

16th, 1900; that in the intervening time witness was concerned about loss of the pearls and was trying to locate them; that about Christmas the plaintiff Anthony came to the witness's office and showed money and made some statements which, as before stated, fixed suspicion on him in witness' mind; that witness never went to police headquarters to give any information in regard to the missing package of pearls, but was taken there by Detective Tyser; that witness told Tyser what he knew with the idea that it would impress him, Tyser, just as it had impressed the witness; that Tyser suggested to witness to go with him to police headquarters and tell his story up there, and witness went to police headquarters with Tyser and told the story; that witness might have told Tyser where Anthony was located and where he could be found, although he did not know exactly where Anthony's house was; that witness did not identify Anthony to Tyser; that when Tyser and Anthony came to witness' office they came to the back door, and witness was standing out front, and Tyser and Anthony came around to where witness was and Tyser said to the witness, "Do you know this fellow?" and witness said, "Hello, George;" that Anthony then asked witness if he knew where Fallis was, and that witness told him he thought Mr. Fallis had gone up in the depot; that this was the substance of the conversation between Anthony and Tyser and the witness at witness' office; that witness, after the arrest was made, went with Tyser to police headquarters; that he went there to see if there was any information they could give him that Detective Tyser did not ask him to come to police headquarters on this occasion; that witness does not remember that Tyser requested him to go to police headquarters to lodge a complaint against Anthony, and he did not do so.

32-64 And thereupon the witness George, on request, produced the general rules and instructions of the Adams Express Company referred to in his testimony, which rules and instructions are as follows:

* * * * *

65 And thereupon, the evidence on both sides being closed, the counsel for the plaintiff in open court discontinued the case as against the defendant George, on the ground that there was no evidence connecting him with the plaintiff's arrest.

And thereupon counsel for the plaintiff requested the court to instruct the jury as follows:

"The jury is instructed that it is the duty of the defendant, The Adams Express Company, as a common carrier of goods safely to carry and deliver to the consignees thereof goods entrusted to the

said company for carriage, and in case of the loss of any such goods before delivery, to use all reasonable diligence and to take all proper steps looking to the recovery of such lost goods, in order that they may be duly delivered to the consignees thereof; and the duties of the said company as thus defined and prescribed are to be met and discharged by the proper officers and agents of the company when the same should or can be met and discharged by such officers and agents in the due course of their employment. Accordingly, if the jury find from the evidence that at the time of the grievances complained of in the declaration, the defendant Waters was an agent or clerk of the said company having charge of the receipt of goods being transported and handled by the said company at a railroad station in the city of Washington, and the delivery of such goods to the consignees thereof, that a package of goods while in the care of the said company and received by it for transportation and delivery was lost or stolen from the said railroad station, that the said Waters, with a view of recovering the said package of

66 goods so lost or stolen, directed or authorized a police officer to arrest the plaintiff on the charge of having stolen the said package of goods; that the plaintiff was thereupon arrested and imprisoned and was not guilty of stealing the said package of goods, and was thereafter discharged as being so not guilty, the plaintiff is entitled to recover in this action against the defendant Waters and the said company such damages as the jury may find from the evidence will fairly compensate the plaintiff for the deprivation of his liberty, the indignity of his arrest and the circumstances attending the same, the injury to his feelings, and the mental suffering and distress which he may have been caused and suffered by him in the premises to the time of the trial."

(Granted.)

Thereupon counsel for the defendants requested the court to instruct the jury as follows:

1. "The court instructs the jury that there is no evidence in this case legally sufficient to prove that the defendant James F. Waters ordered the arrest complained of in the declaration or that he ratified and adopted the said act, and your verdict must be for this defendant."

(Rejected.)

2. "The court instructs the jury that there is no evidence in this case legally sufficient to prove that the defendants Levi C. Weir, Henry Sanford and Clarence A. Seward, copartners trading as the Adams Express Company, ordered the arrest complained of in the declaration, or that they or any of them subsequently ratified and adopted the said act and your verdict must be for these defendants."

(Rejected.)

67 3. "The court instructs the jury that if they find from the evidence that the defendant, Waters, reported to the police department of the District of Columbia the theft of a package of pearls, and that the said police department detailed one of its detectives, William Tyser, to investigate the case and that said Tyser in the

course of his investigation to discover who the thief was had a conversation with the said Waters in which he asked him whom he suspected; that Waters in such conversation said that the plaintiff, Anthony, had been around the office where the said pearls were kept on the morning they were missing, and that when questioned by him, Waters, the plaintiff stated that he had been home oiling two floors for his wife that day, and shall further find that the said Tyser then consulted with Detective Parham of said police department, and after such consultation, on the information and statements made to Tyser by the defendant Waters, it was determined by the said Tyser and Parham to arrest the plaintiff, Anthony, for the supposed theft, which subsequently was done, then the verdict must be for the defendant Waters (unless you shall further find that the defendant Waters requested or directed the arrest of the plaintiff and that the arrest of the plaintiff was in fact made in pursuance of such request or direction of Waters)."

(Granted, with modification contained within brackets.)

To the action of the court in granting said prayer of the plaintiff, and to the refusal of the court to grant said several prayers of the

68 defendants as asked, and to the granting of the defendants' third prayer as modified, and allowing the same to be read

to the jury, the defendants, by their counsel, excepted severally and respectively, and said exceptions were duly noted on the minutes of the court, and the said counsel requests the court to sign and seal this the defendants' bill of exceptions to said several rulings and each of them, which is accordingly done, now for them, this 27th day of January, 1902.

E. F. BINGHAM, [SEAL.]
Chief Justice.

And thereupon, after signing and sealing said bill of exceptions hereby made part hereof, the court of its own motion charged the jury as follows:

Charge.

The COURT (Mr. Chief Justice Bingham): Gentlemen of the jury, George H. Anthony sues James F. Waters, Oliver B. George, and Levi C. Weir, Henry Sanford, and Clarence A. Seward, copartners trading as the Adams Express Company, and says that the defendants Levi C. Weir, Henry Sanford, and Clarence A. Seward are and at the time of the committing of the grievances hereinafter mentioned were copartners doing business under the firm name and style of Adams Express Company, in, to wit, the District of Columbia, and the defendants Waters and George were, at the time of the committing of the said grievances, servants and in the employ of the said Adams Express Company in the said District of Columbia, on, to wit, the 16th day of January, A. D. 1900, charged in the declaration, for you to inquire as to any others in reference to whom it may be claimed that there is evidence tending to

69 show that they are guilty.

It is further conceded as a fact, I believe, in the opening state-

ment in the case, that the defendants Levi C. Weir, Henry Sanford, and Clarence A. Seward are correctly described in this declaration as being copartners trading as the Adams Express Company, and that those three persons constitute the Adams Express Company. And it is further conceded, I believe, that the defendants George and Waters were at the time of the wrong alleged in this declaration, the occurrence of the wrong alleged in this declaration, employees of the defendants constituting the Adams Express Company, or were the employees of the Adams Express Company. The claim of the plaintiff is that the injury of which the plaintiff complains was received by and through the defendants, and now, the matter of George's liability being disposed of, that it came through the action and conduct of the defendant James F. Waters. It is claimed that he incited and requested one Tyser, who was connected with the detective force of this city, to arrest the plaintiff, and that he did so at the request of Waters. It is claimed that Waters at the time was acting in the employment of the Adams Express Company, and that he was at the time acting in pursuance of his employment; that his employment was the receiving of parcels that were conveyed by the Adams Express Company to this point and their delivery, and that at the time the request was made of Tyser, the detective, Waters, if he did make it—the claim is that it was made, and I am only stating the claim of the plaintiff, you understand—was engaged at that time in the employment of the

70 Adams Express Company, and that the request was made by him for the purpose and with a view of recovering the package which had been received at the office of the Adams Express Company in this city, which had been mislaid, lost, or stolen, perhaps alleged to have been stolen.

The defendants deny that the arrest was made in that way, and aver that it was made by the detective, by the detective force, by Tyser, upon his own suggestion, or that of his principal—his chief—the man under whom he was serving as a detective, and not at the request or upon the suggestion of the defendant Waters.

That, gentlemen, is the issue of fact which you are to try, and to which you should turn your attention in your retirement, bringing to your aid the consideration of all the testimony that may bear upon that point. If Waters requested Tyser, the detective, to make the arrest, and Tyser did make the arrest upon that request, and if you find from the evidence, are satisfied from the evidence, that Waters, in making this request, was moved to do so by the desire and hope of recovering the lost or stolen property in question, and that Tyser did not make the arrest upon his own suggestion, or merely because of the fact of suspicions that had been merely communicated to him by the defendant Waters, or upon the suggestion of his codetective, Parham, then the defendant Waters will be liable. But if he did not make it upon Waters' suggestion, if Tyser did not make the arrest upon Waters' suggestion and request, the defendant Waters would not be liable, and none of the defendants would be liable.

(If, on the other hand, you find, as I have already stated to you, that the arrest was made upon the request of Waters, if Tyser was induced to make it by the suggestions or request of the
71 defendant Waters, and that he would not have made the arrest without such suggestion, then the defendant Waters would be liable and there should be a verdict against him by you. And in that event, if you should find that Waters did this while acting in his capacity as an employee of the Adams Express Company, and made this suggestion to Tyser, or requested of Tyser to make the arrest, in consequence of which Tyser did make the arrest, and that at the time he was doing so repeated that for the purpose of recovering, or with the hope of recovering the lost or stolen property in question, then not only the defendant Waters would be liable, but the codefendants, the partners constituting the Adams Express Company would be liable).

I am requested to give a prayer on behalf of the plaintiff which, with some modifications, I shall do, and which is read to you as being the law.

("The jury is instructed that it is the duty of the defendants, The Adams Express Company, as a common carrier of goods safely to carry and deliver to the consignees thereof goods entrusted to the said company for carriage, and in case of the loss of any such goods before delivery, to use all reasonable diligence and to take all proper steps looking to the recovery of such lost goods, in order that they may be duly delivered to the consignees thereof; and the duties of the said company as thus defined and prescribed are to be met and discharged by the proper officers and agents of the company when the same should or can be met and discharged by such officers and agents in the due course of their employment. Accord-
72 ingly, if the jury find from the evidence that at the time of the grievances complained of in the declaration, the defendant Waters was an agent or clerk of the said company having charge of the receipt of goods being transported and handled by the said company at a railroad station in the city of Washington, and the delivery of such goods to the consignees thereof, that a package of goods while in the care of the said company and received by it for transportation and delivery, was lost or stolen from the said railroad station, that the said Waters, with a view to recovering the said package of goods so lost or stolen directed or authorized a police officer to arrest the plaintiff on the charge of having stolen the said package of goods; that the plaintiff was thereupon arrested and imprisoned, and was not guilty of stealing the said package of goods, and was thereafter discharged as being so not guilty, the plaintiff is entitled to recover in this action against the defendant Waters and the said company such damages as the jury may find from the evidence will fairly compensate the plaintiff for the deprivation of his liberty, the indignity of his arrest and the circumstances attending the same, the injury to his feelings, and the mental suffering and distress which he may have been caused and suffered by him in the premises to the time of the trial.")

You will observe one element which is incorporated into this prayer which I did not mention in my oral remarks to you, and which I probably should have included in my statement of what it would be necessary for you to find in order to return a verdict for the plaintiff. In addition to the things that I mentioned is this other thing mentioned here in this prayer, which is that for the

73 plaintiff to recover it is necessary you should find that the plaintiff was not guilty of the charge of having stolen the goods, for the stealing of which it is alleged he was arrested

You will of course look to the evidence for the purpose of determining that as well as all other questions of fact which I have suggested to you as being matters to be determined, being within your province to determine.

I will caution you, gentlemen, if you should find a verdict for the plaintiff in this case—I think it is my duty to add a word of caution to you in regard to assessing damages—that is, that you are to understand that you are to return compensatory damages, damages to compensate the plaintiff for the injuries which are set forth correctly in this prayer which I have just read to you, namely, such damages as you may find from the evidence will “fairly compensate the plaintiff for the deprivation of his liberty, the indignity of his arrest, and the circumstances attending the same, the injury to his feelings, and the mental suffering and distress which he may have been caused and suffered by him in the premises to the time of the trial.” You have no right, gentlemen, to undertake to punish the defendants in this action. The plaintiff is entitled to be fully compensated, and you are to return such sum as in your judgment will, under the circumstances, compensate him for the injuries which are recited here in this prayer, but for none of this, or under no circumstances, should a farthing be given by you with the idea that it is for the purpose of punishing the defendants. They are not liable for any penal damages, nor for any damages such as are ordinarily called “smart money,” or anything of that kind. If on

74 the testimony you find for the plaintiff, the defendants are liable to pay actual damages incurred by the plaintiff, and that sum must be fixed by you upon a fair consideration of all the testimony in the case. No sum can be suggested by the court or any one else to you. It must be a sum fixed by your judgments, fairly exercised, taking the whole situation into account, as developed by the testimony.

There is another prayer here which I will present to you. This prayer has been somewhat modified. The court has been requested by the defendants to give you the following prayer, which is given to you as modified, as being the law:

“The court instructs the jury that if they find from the evidence that the defendant, Waters, reported to the police department of the District of Columbia the theft of a package of pearls, and that the said police department detailed one of its detectives, William T. Tyser, to investigate the case, and that said Tyser in the course of his investigation to discover who the thief was had a conversa-

tion with the said Waters in which he asked him whom he suspected; that Waters in such conversation said that the plaintiff Anthony, had been around the office where the said pearls were kept on the morning they were missing, and that when questioned by him, Waters, the plaintiff stated that he had been home oiling two floors for his wife that day, and shall further find that the said Tyser then consulted with Detective Parham of said police department, and after such consultation, on the information and statements made to Tyser by the defendant, Waters, it was determined by the said Tyser and Parham to arrest the plaintiff, Anthony, for the supposed theft, which subsequently was done, then the verdict must be for the defendant, Waters; unless you shall further find that the

75 defendant Waters requested or directed the arrest of the plaintiff, and that the arrest of the plaintiff was in fact made in pursuance of such request or direction of Waters."

This, gentlemen, is given to you as the law, and is entirely consistent, I think, with the law we have given to you already. If there was no request or direction on the part of Waters to the detective to make the arrest, but only a statement made by Waters to the detective of what he suspected, of what had actually occurred, of the loss of the pearls, and that with a statement of the conduct of the plaintiff—some conduct of the plaintiff—but a statement of a bare suspicion upon the part of the defendant Waters as to Anthony, the plaintiff in the case, that would not render the defendant liable, nor any of his codefendants, simply for the reason that it would not amount to any request or direction on the part of Waters to the detective Tyser to make the arrest (and before you can find a verdict against Waters or any of his colleagues, you must find that Waters did request or direct the detective to make the arrest of the plaintiff).

And thereupon, before the jury retired to consider of their verdict, the defendants, by their counsel, excepted to so much and such parts of said charge as is contained within brackets, and said exceptions were noted at the time on the minutes of the court before the jury retired to consider of their verdict.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Settled by consent.

HENRY E. DAVIS,
Attorney for Plaintiff.
S. T. THOMAS,
Attorney for Defendant.

76 UNITED STATES OF AMERICA, } ss:
 District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 44, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 43985, at law, wherein George B. Anthony is plaintiff and James F. Waters *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, in said District,
 Columbia. this 11th day of February, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

77 In the Court of Appeals of the District of Columbia, January
 Term, 1902.

JAMES F. WATERS ET AL., Appellants, }
 vs. } No. 1181.
 GEORGE H. ANTHONY.

It is hereby stipulated that the general rules and instructions of Adams Express Co., annexed to the bill of exceptions, beginning at page 33 of the transcript of record, may be omitted by the clerk in printing, counsel for the appellants agreeing to furnish copies of said rules and instructions for the use of the court and counsel on the argument, if desired.

S. T. THOMAS,
Att'y for Appellants.
 HENRY E. DAVIS,
 GEORGE W. DREW,
Att'ys for Appellees.

(Endorsed:) No. 1181. Court of Appeals, D. C., January term, 1902. James F. Waters *et al.*, appellants, *vs.* George H. Anthony. Stipulation as to printing record. Court of Appeals, District of Columbia. Filed Feb. 18, 1902. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1181. James F. Waters *et al.*, appellants, *vs.* George H. Anthony. Court of Appeals, District of Columbia. Filed Feb. 18, 1902. Robert Willett, clerk.

ADDITION TO RECORD PER STIPULATION OF
COUNSEL.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1181.

JAMES F. WATERS; AND LEVI C. WEIR, HENRY SAN-
FORD, AND CLARENCE A. SEWARD, PARTNERS
TRADING AS ADAMS EXPRESS COMPANY, APPEL-
LANTS,

vs.

GEORGE H. ANTHONY.

FILED MARCH 31, 1902.

Court of Appeals, District of Columbia, April Term, 1902.

JAMES F. WATERS; and LEVI C. WEIR, HENRY SAN- ford, and Clarence A. Seward, Partners Trading as Adams Express Company, Appellants, <i>vs.</i> GEORGE H. ANTHONY.	}	No. 1181.
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Appeal from the supreme court of the District of Columbia.

Stipulation.

Whereas by a slip in copying there was omitted from the state-
ment of the testimony of Tyser in the bill of exceptions in this case
the following, viz: After the word "the" and before the word
"trial," at the bottom of page 15, the following: "Witness does not
know the defendants Levi C. Weir, Henry Sanford, and Clarence A.
Seward, trading as Adams Express Co., and never heard of them be-
fore the;" and after the word "him," top of page 16, the following:

"That witness simply asked Mr. George if they had had a loss, and Mr. George replied they had a man responsible for it, and they had no more to do with it; that the man at the Pennsylvania depot was held responsible, and their end of it was through." It is agreed between counsel for the respective parties that the above omissions from Tyser's testimony may be considered as in the bill of exceptions and may be printed by the clerk of this court as part of the record herein.

S. T. THOMAS,
Att'y for Appellants.
HENRY E. DAVIS,
GEO. W. DREW,
Att'y for Appellee.

[Endorsed:] No. 1181. James F. Waters *et al.*, appellants, *vs.* George Anthony. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 31, 1902. Robert Willett, clerk.

